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STATE PASS USTR FOR B. WEISEL AND J. JENSEN  
USDOC FOR 4430/MAC/EAP/J. BAKER  
TREASURY FOR OASIA

E.O. 12958: DECL: 05/04/2016  
TAGS: [ETRD](#) [EINV](#) [MY](#) [NZ](#)  
SUBJECT: THE MALAYSIA-NEW ZEALAND FTA TAKES A DETOUR

REF: KUALA LUMPUR 0570

Classified By: Economic Counselor Colin Helmer for reasons 1.5 B & D.

11. (C) Summary: New Zealand negotiators made progress in some areas in their latest FTA round with Malaysia, but encountered Malaysian stonewalling and even backtracking in others. Problem areas included services, government procurement, environment and labor. An NZ High Commission officer said the poor results came as a disappointment, as both sides planned for it to be the concluding round. NZ officials speculate that Minister Rafidah may have instructed Malaysian negotiators to take a tougher line following a rough session in parliament, where she was forced to defend the government's plan to negotiate an FTA with the U.S. We caution against drawing too close a parallel between the New Zealand experience and our upcoming FTA negotiations, but we may see more Malaysian posturing than we previously anticipated. End summary.

Advancing to the "Red Lines"

12. (C) New Zealand and Malaysian negotiators held what was supposed to be their final FTA round the week of April 24, but failed to conclude an agreement. According to an NZ High Commission officer, negotiators managed to complete ad referendum text regarding rules of origin, customs, intellectual property, sanitary and phytosanitary measures (SPS), economic cooperation, technical barriers to trade (TBT), and competition policy. Text for the goods chapter is very near completion. In other areas, however, Malaysian negotiators offered no flexibility and in some cases even backtracked on previous positions. The NZ officer said Malaysian negotiators declared "red lines" so frequently that it became a joke within the New Zealand delegation that there would soon be a shortage of red ink in Malaysia.

13. (C) In services, which New Zealand considers a key "offensive" area, Malaysian negotiators have been reluctant to accord most favored nation (MFN) status. Malaysian officials insisted on a positive list approach and carved out all but a few areas that are not of interest to New Zealand. Malaysia's lead services negotiator only appeared for one of the five days of the round, leaving matters to less senior officers who proved unwilling to discuss alternatives. (Comment: NZ negotiators wonder if her absence might have been intentional, as this Malaysian negotiator is known to be a "straight shooter." We share their suspicion.)

## Backtracking to Nowhere

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¶4. (C) The Malaysian team did not even bring a government procurement negotiator to the table this round, after having discussed procurement in previous rounds. Similarly, Malaysia's lead negotiator announced that environment and labor could not be part of the agreement, after having negotiated text on these issues previously. New Zealand officials who had traveled from Wellington with the expectation that they would be engaging on these matters, were left with nothing to do. In the area of investment, Malaysian officials withdrew previous concessions, leaving a narrow package with "zero benefits" for New Zealand.

¶5. (C) Overall, the NZ officer characterized the New Zealand team as "frustrated, disappointed and bruised" by the Malaysian approach to this round. He said that there was a "dramatic change in the atmosphere" in this session, with Malaysian negotiators becoming increasingly wary of giving any ground. He speculated that the change was due to a recent difficult session that MITI Minister Rafidah had in parliament. With backbenchers and opposition members questioning the government's plan to negotiate an FTA with the U.S., Rafidah was forced to take a strong defensive stance that Malaysian interests would be protected. NZ officials suspect that Rafidah gave instructions to the Malaysian team to take a tougher line in their negotiations to avoid concessions that could be seen as openings for the U.S.

## Where to Now?

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¶6. (C) There has been no discussion of when the next Malaysian-NZ round might be held. The NZ officer said that on his side the decision on where to go from here would be made at the political level in Wellington. He thought it very unlikely that his government would agree to an FTA without greater access on services and some mention of environment and labor. He observed that working level negotiators had taken the process a long way. There is a significant amount of agreed text. But he felt that further progress would require political level decisions: either for New Zealand to settle for much less than it wanted, or for Malaysia to accord greater benefits than it currently appears willing to offer.

## Your Mileage May Vary

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¶7. (C) Comment: New Zealand is facing the same difficulties as Australia (see reftel) in negotiating chapters on financial services and government procurement with Malaysia. Both countries recent experiences indicate that these will be challenging sectors for U.S. negotiators as well. However, we would caution against drawing too close a parallel between what happened in the New Zealand-Malaysia negotiations and what might happen in our first FTA round. As the NZ officer himself noted, Malaysia will respond differently to its largest trading partner and largest source of FDI, than it does to a small country like New Zealand. That said we still may encounter more Malaysian posturing than we previously anticipated, should Rafidah feel the need to instruct her troops to be seen as standing up to the U.S.

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